

Testimony of Natasha Reifenberg and Leighton Fernando G. Cook

In SUPPORT of HOUSE BILL 6616: An Act Concerning Expansion of Husky Health Benefits to Those Ineligible Due to Immigration Status

February 14, 2023

Human Services Committee

Dear Members of the Human Services Committee of Connecticut General Assembly:

We, Natasha Reifenberg and Leighton Fernando G. Cook, are law student interns in the Worker and Immigrant Rights Advocacy Clinic at Yale Law School. We submit this written testimony in support of HB 6616: An Act Concerning Expansion of Husky Health Benefits to Those Ineligible Due to Immigration Status, on behalf of our client, Connecticut Students for a Dream.

We are writing in regard to a concern some have raised about this proposed expansion of HUSKY for the public charge rule in federal immigration law. In short, greater access to HUSKY by undocumented residents would not result in adverse immigration consequences for undocumented individuals under the current public charge rule, except in one uncommon circumstance. The U.S. Department of Homeland Security generally does not consider Medicaid benefits such as HUSKY in its public charge determination under its current rules. The sole exception is for certain forms of institutionalized care paid for by Medicaid. Furthermore, Connecticut's Department of Social Services generally cannot, under state and federal law, share Medicaid eligibility or benefit usage with ICE or other immigration officials.

Under current federal regulations, a public charge is defined as an individual who is likely "to become primarily dependent on the government for subsistence, as demonstrated by either the receipt of public cash assistance for income maintenance or long-term institutionalization at government expense." 8 C.F.R. § 212.21. If a noncitizen is found likely to become a public charge, they could be denied a green card, visa, or admission to the United States. However, HUSKY is not considered a benefit for public charge purposes because it does not constitute "public cash assistance." Federal regulation defines public cash assistance as Supplemental Security Income, TANF, and non-federal cash benefit programs. 8 C.F.R. § 212.21. Medicaid is specifically excluded by federal regulations. 8 C.F.R. § 212.22(a)(3).

Although long-term institutionalization paid by Medicaid can be considered public cash assistance, this occurs only in rare circumstances. Long-term institutionalization only counts for public charge purposes when it is an institutional service provided under section 1905(a) of the Social Security Act, in a nursing facility or mental health institution. 8 C.F.R. § 212.21(c). Notably, home and community-based services and any services provided under HUSKY B (as a service provided under the Children's Health Insurance Program (CHIP)) are *never* considered long-term institutionalization at government expense. *See* 8 C.F.R. § 212.22(a)(3) (excluding CHIP from consideration by DHS without exception). Thus, the scenario in which an undocumented person could hypothetically suffer adverse immigration consequences due to

expanded HUSKY access is incredibly limited. Such person would have to be an adult who has been continuously institutionalized for a long period with no violation of their rights. *Id.* Even in such a scenario, aged, blind, or disabled individuals could apply for a waiver of the public charge ground. 8 U.S.C. § 1255a(d)(2)(B)(ii); 8 C.F.R. § 212.23(c)(3).

Furthermore, the public charge ground does not apply to lawful permanent residents (green card holders) seeking citizenship, green card renewals, or noncitizens seeking extensions of visas. 8 U.S.C. § 1182(a)(4)(A); 87 Fed. Reg. at 55502. The public charge ground applies when a noncitizen is applying for a visa, for admission to the United States, or for adjustments of status (applying for a green card). 8 U.S.C. § 1182(a)(4)(a). Additionally, it is used extremely sparingly in deportation cases. *Public Charge Law is Rarely Used to Deport Immigrants—Is That About to Change?*, TRACIMMIGRATION (Feb. 28, 2020), <https://trac.syr.edu/immigration/reports/596/>. Finally, there are over two dozen statutory exemptions in which the public charge inadmissibility ground is inapplicable. The exempted groups are significant, including asylees, refugees, victims of qualifying criminal activity (U-Visa applicants), Special Immigrant Juvenile Status petitioners, and applicants seeking Temporary Protected Status, among others.

Additionally, the Connecticut Department of Social Services is not permitted to share information about an individual's eligibility for public benefit programs with ICE or other immigration officials under federal and state privacy regulations. Thus, immigration officials should not receive any information from the Connecticut Department of Social Services regarding HUSKY eligibility and benefits more broadly, nor institutionalization paid for by the state of Connecticut more specifically.

In conclusion, the expansion of HUSKY would greatly benefit the undocumented residents of Connecticut and any such expansion would only result in a minimal risk of any adverse immigration-related consequences under current federal regulations. We support HB 6616, and we ask the committee to support and pass this legislation. Looking forward, we ask the committee to work towards opening access to all immigrants regardless of age.

If any members have questions about our testimony or would like additional information, please contact us at the emails listed below. We would be more than happy to discuss any part of our testimony.

Thank you for your time,

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On behalf of Connecticut Students for a Dream